

E-FILED on 1/3/13

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SUIBIN ZHANG,

Defendant.

No. CR-05-00812 RMW

ORDER GRANTING NON-PARTY
MARVELL'S ADMINISTRATIVE MOTION
TO FILE UNDER SEAL CERTAIN TRIAL
EXHIBITS AND PORTIONS OF THE TRIAL
TRANSCRIPT

[Docket #273]

Pursuant to Criminal Local Rule 55-1(b) and Civil Local Rules 7-11(a) and 79-5, non-party Marvell Semiconductor, Inc. ("Marvell") requests that the Court order the Clerk of the Court to file permanently under seal the following trial exhibits and testimony: (1) Government Exhibits 1-16, 19, 40-43, 45-83, 85, and 87-90, and Defendant's Exhibits 518, 599-601, 603-611, 663, and 684 in their entirety; (2) portions of Government Exhibits 25, 28, 30, and 116, and Defendant's Exhibit 540, redacted versions of which are attached as Exhibits 1-5 to the declaration of George Hervey, Jr. in support of this motion (the "Hervey Declaration"), and lodged with the Clerk of Court; and (3) portions of the trial transcript containing the testimony of George Hervey, Jr. as reflected in the

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1 redacted transcripts attached as Exhibit 6-8 to the Hervey Declaration, and lodged with the Clerk of
2 Court.

3 The court finds that the filing of the identified testimony and exhibits under seal is necessary
4 and narrowly tailored to protect the confidentiality of Marvell's information. Marvell has supported
5 its request by the signed stipulation of the parties and the declarations of George Hervey, Jr., the
6 senior engineer at Marvell in charge of customer support, and Jason McDonell, counsel for Marvell.
7 Marvell has sufficiently shown that the need of Marvell to keep the information under seal
8 outweighs the public policies favoring disclosure of all evidence submitted at trial. In the instant
9 case, public disclosure of Marvell's confidential and proprietary information could harm Marvell's
10 competitive position in the marketplace in several ways: (1) competitors could use the information
11 to design and manufacture products that compete directly with Marvell's products; (2) the
12 information might give Marvell's competitors a market advantage even if they did not use it to
13 manufacture identical products (for example, a competitor could use its understanding of Marvell's
14 proprietary information to anticipate alternate designs and to advise customers that it intends to
15 introduce new products that compete with Marvell's products on the basis of cost, power, or other
16 design decisions); and (3) knowledge of Marvell's errata releases could be exploited by competitors
17 seeking to undermine Marvell's products.

18 A number of trial courts have sealed records pursuant to requests such as made here. *See,*
19 *e.g., Abstrax, Inc. v. Sun Microsystems, Inc.*, 2011 WL 2550825, at *3 (N.D. Cal. June 27, 2011)
20 (finding compelling reason to seal documents "that include Sun's confidential information regarding
21 revenue, products, internal manufacturing procedures, source code development, and related
22 deposition testimony" because those documents "represent confidential information that would be
23 harmful to Sun if disclosed"); *Richardson v. Mylan Inc.*, 2011 WL 837148 at *2 (S.D. Cal. Mar. 9,
24 2011) (sealing trial testimony that, if revealed to defendants' competitors, could have serious
25 consequences for defendants' business); *Sullivan v. Deutsche Bank Americas Holding Corp.*, 2010
26 WL 3448608, at *2 (S.D. Cal. Aug. 31, 2010) (sealing documents because of the proprietary nature
27 of the confidential information"); *see also* 18 U.S.C. § 1835.

1 The court is not saying by this order that it has found that all the identified exhibits and
2 testimony to contain trade secret or other protectible confidential and proprietary information.
3 However, Marvell has made more than an adequate showing to justify the sealing request.
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5 DATED: 1/3/13



RONALD M. WHYTE
United States District Judge

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Copy of Order Electronically Mailed to Counsel of Record:

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